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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,278	12/15/2003	Aaron L. Mixson	2515.001	4290
7590	01/26/2005		EXAMINER	
B. Craig Killough Barnwell Whaley Patterson & Helms, LLC P.O. Drawer H Charleston, SC 29402-0197			LEE, JINHEE J	
			ART UNIT	PAPER NUMBER
			2831	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/736,278	MIXSON, AARON L.
	<b>Examiner</b>	<b>Art Unit</b>
	Jinhee J Lee	2831

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1203</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lower opening of claims 1 and 9; upper portion of claims 1 and 9; upper and outer portion of claims 1 and 2; lower and outer portion of claims 1, 2, 3 and 4; outer portion of claims 2, 3 and 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

### ***Specification***

3. The disclosure is objected to because of the following informalities:

At page 3 line 17 (according to the numbering on the left), the brief description of the drawings is missing for figures 6 and 7.

Appropriate correction is required.

### ***Claim Objections***

4. Claims 3 and 4 are objected to because of the following informalities:

Claim 3 line 2 and claim 4 line 2, the phrase "said least three" has a grammatical error. Examiner suggests, "said at least three" instead to correct the grammatical error. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "generally horizontally" in line 7. This is confusing. The phrase seems to be missing a word. Examiner will interpret the phrase as, "generally horizontal" for the purposes of examining.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Weagant (3395382).

Re claim 1, Weagant discloses a cap, comprising a hollow body (unnumbered, see figure 2), wherein said hollow body comprises a lower opening (unnumbered see figures 1 and 2 on 14, cover member), wherein said lower opening is adapted to accept

an open end of a conduit in said lower opening; and wherein said hollow body comprises at least three openings (unnumbered on 22, sleeve, see figures 1 and 2) in an upper portion of said hollow body, wherein said at least three openings communicate with said lower opening (at 14, see figure 2), and wherein an upper and outer portion (unnumbered upper portion of 14) of said hollow body is of reduced dimension relative to a lower and outer portion (unnumbered lower portion of 14) of said hollow body.

Note that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Re claim 2, Weagant discloses a cap, wherein an outer portion of said hollow body that is between said upper and outer portion of said hollow body and said lower and outer portion of said hollow body has an inverted frusto-conical shape (see 14 below 22, see figures 1 and 2).

Re claim 3, Weagant discloses a cap, wherein an outer portion of said hollow body that is between said at least three openings and said lower and outer portion of said hollow body has an inverted frusto-conical shape (see 14 below 22, see figures 1 and 2).

Re claim 4, Weagant discloses a cap, wherein an outer portion of said hollow body that is between said at least three openings and said lower and outer portion of said hollow body has an inverted frusto-conical shape, and wherein a passageway (unnumbered in sleeve 22) is formed in an upper portion of said hollow body, and wherein said at least three openings are formed in said passageway, and wherein said

passageway adjoins, and is positioned over, an upper surface of said inverted frusto-conical shape (see 14 below 22, see figures 1 and 2).

Re claim 7, Weagant discloses a cap, wherein said passageway has a void that is positioned between said at least three openings (between the sleeves 22).

Re claim 9 (as best understood), Weagant discloses a cap, comprising a hollow body (unnumbered, see figure 2), wherein said hollow body comprises a lower opening (unnumbered, see figures 1 and 2), wherein said lower opening is adapted to accept an open end of a conduit in said lower opening; and wherein said hollow body comprises at least three openings (unnumbered in 22, see figures 1 and 2) in an upper portion of said hollow body, wherein said at least three openings communicate with said lower opening (at 14, see figure 2), and wherein no portion of said hollow body that is below said at least three openings is generally horizontal, and wherein a portion of said hollow body that is between said at least three openings extends generally vertically from said hollow body and above said hollow body (see figures 1 and 2). Note that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2831

10. Claims 5, 6, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weagant in view of Williams (6291774).

Re claim 5, Weagant substantially discloses a cap as set forth in claim 1 above. Weagant does not explicitly disclose wherein said hollow body comprises a probe that is positioned between and extends above said at least three openings. However, Williams teaches of a probe (G, guard, see figure 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the probe of Williams placed on the cap between the three openings of Weagant in order to provide a protective wildlife guard.

Re claim 6, note that the device of Williams teaches of a probe that has a pointed upper end (see figure 10).

Re claim 8, Weagant substantially discloses a cap as set forth in claim 7 above. Weagant does not explicitly disclose a probe that is positioned within said void, wherein said probe extends above said at least three openings. However, Williams teaches of a probe (G, guard, see figure 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the probe of Williams placed on the cap between the three openings within the void of Weagant in order to provide a protective wildlife guard.

Re claim 10, Weagant substantially discloses a cap as set forth in claim 9 above. Weagant does not explicitly disclose wherein said portion of said hollow body that is between said at least three openings and extends generally vertically from said hollow body and above said hollow body is a probe. However, Williams teaches of a probe (G,

guard, see figure 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the probe of Williams placed vertically on the cap between the three openings above the hollow body of Weagant in order to provide a protective wildlife guard.

Re claim 11, note that the device of Williams teaches of a probe that has a pointed upper end (see figure 10).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinhee J Lee whose telephone number is 571-272-1977. The examiner can normally be reached on M, T, Th and F at 6:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A Reichard can be reached on 571-272-2800 ext. 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jinhee J Lee  
A.U. 2831  
Patent Examiner